

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

**SESSION LAW 2001-442
HOUSE BILL 1063**

AN ACT TO PROVIDE FOR PERFORMANCE-BASED CLEANUPS OF DISCHARGES OR RELEASES OF PETROLEUM FROM UNDERGROUND STORAGE TANKS AND TO AUTHORIZE THE STATE BUILDING COMMISSION TO ADOPT RULES TO AUTHORIZE OPEN-END DESIGN AGREEMENTS FOR WETLANDS MITIGATION AND SIMILAR PROJECTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-215.94B is amended by adding a new subsection to read:

"(f) On the first day of each fiscal quarter, the Department may allocate up to fifty percent (50%) of the funds in the Commercial Fund that are not otherwise obligated for performance-based cleanups as provided in this subsection. The Department may also use any funds that are available from any other source and that are specifically intended to be used for performance-based cleanups as provided in this section. Each performance-based cleanup shall comply with the requirements of this Part and any other provisions of law that govern the cleanup of environmental damage resulting from the discharge or release of a petroleum product from a commercial underground storage tank. The Department may contract for performance-based cleanups with environmental services firms that the Department has determined to be qualified to satisfactorily complete the work associated with a cleanup. A performance-based contract shall provide that cleanup will be completed within the time and for the cost stated in the contract. The Department shall select environmental services firms for performance-based cleanup through a competitive bidding process. The Commission shall adopt rules governing the competitive bidding process. The rules shall establish qualifications for environmental services firms and for individuals and firms that provide engineering services as part of a contract to satisfactorily complete work associated with cleanup."

SECTION 2. G.S. 143-215.94D is amended by adding a new subsection to read:

"(f) On the first day of each fiscal quarter, the Department may allocate up to fifty percent (50%) of the funds in the Noncommercial Fund that are not otherwise obligated for performance-based cleanups as provided in this subsection. The Department may also use any funds that are available from any other source and that are specifically intended to be used for performance-based cleanups as provided in this section. Each performance-based cleanup shall comply with the requirements of this Part and any other provisions of law that govern the cleanup of environmental damage resulting from the discharge or release of a petroleum product from a noncommercial underground storage tank. The Department may contract for performance-based cleanups with environmental services firms that the Department has determined to be qualified to satisfactorily complete the work associated with a cleanup. A performance-based contract shall provide that cleanup will be completed within the time and for the cost stated in the contract. The Department shall select environmental services firms for performance-based cleanup through a competitive bidding process. The Commission shall adopt rules governing the competitive bidding process. The rules shall establish qualifications for environmental services firms and for individuals and firms that

provide engineering services as part of a contract to satisfactorily complete work associated with cleanup."

SECTION 3. G.S. 143-215.94G is amended by adding a new subsection to read:

"(a3) The Department may implement the provisions of subsection (a) of this section as provided in G.S. 143-215.94B(f) and G.S. 143-215.94D(f)."

SECTION 4. G.S. 143-135.27 reads as rewritten:

"§ 143-135.27. Definition of capital improvement project.

As used in this Article, 'State capital improvement project' means the construction of and any alteration, renovation, or addition to State buildings, as defined in G.S. 143-336, for which State funds, as defined in G.S. 143-1, are used and which is required by G.S. 143-129 to be publicly advertised. 'State capital improvement project' does not include a performance-based cleanup of environmental damage resulting from the discharge or release of a petroleum product from an underground storage tank pursuant to G.S. 143-215.94B(f) and G.S. 143-215.94D(f)."

SECTION 5. G.S. 143-336 reads as rewritten:

"§ 143-336. Definitions.

(a) As used in this Article:

- (1) 'Agency' includes every agency, institution, board, commission, bureau, council, department, division, officer, and employee of the State, but does not include counties, municipal corporations, political subdivisions, county and city boards of education, and other local public bodies.
- (2) 'Community college buildings' means all buildings, utilities, and other property developments located at a community college, which is defined in G.S. 115D-2(2).
- (3) 'Department' means the Department of Administration, unless the context otherwise requires.
- (4) 'Public buildings' means all buildings owned or maintained by the State in the City of Raleigh, but does not mean any building ~~which that~~ a State agency other than the Department of Administration is required by law to care for and maintain.
- (5) 'Public buildings and grounds' means all buildings and grounds owned or maintained by the State in the City of Raleigh, but does not mean any building or grounds ~~which that~~ a State agency other than the Department of Administration is required by law to care for and maintain.
- (6) 'Public grounds' means all grounds owned or maintained by the State in the City of Raleigh, but does not mean any grounds ~~which that~~ a State agency other than the Department of Administration is required by law to care for and maintain.
- (7) 'Secretary' means the Secretary of Administration, unless the context otherwise requires.
- (8) 'State buildings' mean all State buildings, utilities, and other property developments except the State Legislative Building, railroads, highway structures, bridge structures, ~~and any buildings, utilities, or property owned or leased by the North Carolina Global TransPark Authority.~~ Authority, and performance-based cleanups of environmental damage resulting from the discharge or release of a petroleum product from an underground storage tank pursuant to G.S. 143-215.94B(f) and G.S. 143-215.94D(f).

(b) ~~But under~~ Under no circumstances shall this Article or any part thereof apply to the judicial or to the legislative branches of the State."

SECTION 6.(a) This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1.

SECTION 6.(b) Notwithstanding G.S. 150B-21.1(a)(2) and 26 NCAC 2C.0102(11), the Environmental Management Commission may adopt temporary rules to implement this act until 1 July 2002. Prior to the adoption of a temporary rule under this section, the Commission shall publish a notice of intent to adopt a temporary rule in the North Carolina Register. The notice shall set out the text of the proposed temporary rule and include the name of the person to whom questions and written comment on the proposed temporary rule may be submitted. The Commission shall accept written comment on the proposed temporary rule for at least 30 days after the notice of intent to adopt a temporary rule is published in the North Carolina Register.

SECTION 6.(c) Notwithstanding G.S. 150B-21.1(a)(2) and 26 NCAC 2C.0102(11), the State Building Commission may adopt temporary rules to authorize open-end design agreements for design and construction of wetland, stream, and buffer creation, mitigation, and restoration projects. Prior to the adoption of a temporary rule under this section, the Commission shall publish a notice of intent to adopt a temporary rule in the North Carolina Register. The notice shall set out the text of the proposed temporary rule and include the name of the person to whom questions and written comment on the proposed temporary rule may be submitted. The Commission shall accept written comment on the proposed temporary rule for at least 30 days after the notice of intent to adopt a temporary rule is published in the North Carolina Register. The State Building Commission is authorized to adopt temporary rules under this section until 1 July 2002.

SECTION 7. Beginning 1 March 2002, the Department of Environment and Natural Resources shall submit a semiannual report to the Environmental Review Commission on the implementation of Sections 1 through 6 of this act as a part of the report required by G.S. 143-215.94M.

SECTION 8. Sections 1 through 5 of this act become effective 1 October 2001. Sections 6, 7, and 8 of this act are effective when this act becomes law. Sections 1, 2, 3, 4, 5, and 7 of this act expire 1 October 2006.

In the General Assembly read three times and ratified this the 4th day of October, 2001.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 7:43 p.m. this 15th day of October, 2001